

OFFICE OF THE SECRETARY  
BEFORE THE DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

Application of:	)	
	)	
<b>Waltzing Matilda Aviation, LLC,</b>	)	
	)	<b>DOCKET Nos. DOT-OST-2021-0046 and</b>
for Certificates of Public Convenience )		<b>DOT-OST-2021-0078</b>
and Necessity to Engage in Interstate )		
Scheduled Air Transportation and )		
Foreign Scheduled Air Transportation )		
_____ )		

**MOTION OF WALTZING MATILDA AVIATION, LLC TO STRIKE THE ANSWER OF  
ALLIED PILOTS ASSOCIATION OR IN THE ALTERNATIVE FOR LEAVE TO FILE  
AN OTHERWISE UNAUTHORIZED REPLY TO THE ANSWER OF ALLIED PILOTS  
ASSOCIATION**

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Date: November 2, 2021

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OF ALLIED PILOTS ASSOCIATION**

COMES NOW Waltzing Matilda Aviation, LLC (WMA) and files this Motion to Strike the Answer of the Allied Pilots Association (APA). The Answer was filed outside the time provided for in the rules and without leave of the DOT Decisionmaker. In the alternative, if the instant motion is denied, WMA seeks leave pursuant to 14 C.F.R. § 302.6(c) to file the Reply to the Answer of APA, set forth in this Motion.

**I. FACTUAL BACKGROUND**

On April 1, 2021, WMA filed an application for a certificate of public convenience and necessity to engage in scheduled passenger air transportation. DOT-OST-2021-0046. On June 28, 2021, WMA filed an application for a certificate of public convenience and necessity to engage in foreign scheduled air transportation. DOT-OST-2021-0078. On September 22, 2021, WMA filed Supplements to the Application in both DOT-OST-2021-0046 and DOT-OST-2021-0078. These

Supplements were docketed on September 24, 2021. As a result, any Answer to these Supplements was due on October 14, 2021.

On October 13, 2021, WMA filed a Response to the Issues Raised by the Department of Transportation in its September 17, 2021 letter in both DOT-OST-2021-0046 and DOT-OST-2021-0078. Pursuant to 14 C.F.R. § 302.6(d), any answer or responsive document to this filing was due within 7 days of filing, or by October 20, 2021. No third party filed responsive documents to Dockets DOT-OST-2021-0046 or DOT-OST-2021-0078 within 7 days of October 20, 2021. Furthermore, WMA has made no filings in either of these dockets since October 13, 2021.

On October 29, 2021, APA filed an Answer in both DOT-OST-2021-0046 and DOT-OST-2021-0078, claiming that its Answer is in “response to the Applications of Waltzing Matilda Aviation, LLC (WMA) for Certificates of Public Necessity and Convenience, as well all subsequent filings by WMA related to those applications.” APA Answer at 1. APA did not file a motion pursuant to 14 C.F.R. § 302.6(c) seeking leave to file the Answer out of time.

## **II. THE ANSWER OF APA SHOULD BE STRICKEN AS UNTIMELY**

Any Answer to the September 22, 2021 supplements to the Applications filed in Dockets DOT-OST-2021-0046 and DOT-OST-2021-0078 were due on October 14, 2021. No third party filed an Answer to either Application. The last filing made by WMA in both dockets was the Response to Issues raised by DOT, on October 13, 2021. Pursuant to 14 C.F.R. § 302.6(d):

an answer, motion, or other further responsive document shall be filed within seven (7) days after service of any document, order, or ruling to which the proposed filing is responsive and must be served on all parties to the proceeding.

As a result, any Answers to the October 13<sup>th</sup> filing was due on October 20, 2021. Since there has been no other filing in these dockets, the Answers of APA, whether it is to the “Application” or to “all subsequent filings,” is untimely. Accordingly, the Answers filed by APA should be stricken.

### **III. THE ANSWERS OF APA SHOULD BE STRICKEN AS THERE CAN BE NO GOOD CAUSE FOR THE UNTIMELY AND UNAUTHORIZED FILING**

Even if APA had filed a motion pursuant to 14 C.F.R. § 302(6)(c) seeking leave from the DOT Decisionmaker to file its unauthorized Answer, the request would have been denied because APA cannot show good cause as required by the rule. 14 C.F.R. § 302(6)(c)(2). Much of APA's Answer concerns a completely separate petition for exemption filed by WMA with the FAA in Docket No. FAA-2021-0986 on October 20, 2021. That petition for exemption seeks relief from the requirements of 14 C.F.R. §121.436(a)(3). APA claims that the requested exemption raises significant safety concerns. However, since the petition for exemption has not been acted on, APA's arguments are premature and irrelevant to the Applications, and there can be no good cause for entertaining them at this time. In addition, as set forth below, no matter how the FAA rules on the petition for exemption, that decision will necessarily completely negate the basis for APA's concerns.

The FAA can only grant an exemption after a full review of the record and analysis of the proposed basis for relief. In doing so, the FAA must specifically find that "granting the exemption would not adversely affect safety," or would "provide a level of safety at least equal to that provided by the rule. . . ." 14 C.F.R. § 11.81(e). The FAA must also specifically find that the exemption "would be in the public interest" and would "benefit the public as a whole." 14 C.F.R. § 11.81(d). As a result, the exemption cannot be granted unless the FAA determines that the petition would **not** impact safety and **would** be in the public interest. Therefore, if the petition is granted, APA's safety concerns will have been found to be without merit, and would therefore be irrelevant to this proceeding.

On the other hand, it is possible that during its review, the FAA will conclude that all or some of the relief requested by WMA does not meet the FAA's high standards. If so, then the

exemption may be denied, or it may be granted in part or granted with conditions. If it is denied, then the APA's Answer is obviously irrelevant. If it is modified or granted in part, then that action will have been based on a specific finding that the partial relief that was granted was both safe and in the public interest.

As a result, there can be no good cause to entertain APA's Answer, as any action the FAA takes will necessarily be based on a specific finding that addresses the arguments raised by APA in its Answer. Accordingly, the untimely and unauthorized Answer of APA should be stricken.

#### **IV. LEAVE SHOULD BE GRANTED TO FILE THE FOLLOWING REPLY OF WMA TO THE ANSWER OF APA**

In the event that WMA's motion to strike the Answer of APA is denied, WMA requests leave to file the following Reply to the Answer of APA pursuant to 14 C.F.R. § 302.6(b) and (c). APA's Answer paints an erroneous and distorted picture of WMA and its proposed operations. The DOT Decisionmaker's ability to properly review the erroneous allegations made by APA will be enhanced by consideration of the following concise reply of WMA. Accordingly, if the Answer of APA is not stricken, there is good cause for the DOT to consider the following Reply.

#### **V. REPLY OF WMA TO ANSWER OF APA**

##### **A. THE RELIEF REQUESTED IN THE PETITION FOR EXEMPTION FILED WITH THE FAA DOES NOT COMPROMISE SAFETY**

As set forth above, the entire premise of APA's Answer is erroneous. It raises arguments that the relief requested by the petition for exemption will negatively impact safety and is not in the public interest. APA ignores the fact that a favorable determination of both of these questions is a prerequisite for the grant of any exemption. Accordingly, the fears raised by APA are without merit and should not influence the DOT's evaluation of WMA's Applications. The above

notwithstanding, an independent review of the issues shows that WMA's proposed operations are safe and in the public interest.

APA makes a number of scurrilous and inflammatory remarks regarding WMA's proposed exemption. APA claims that WMA's Canadian based pilots "will not meet the safety standards that apply to U.S. pilots," and that WMA will fly with pilots who "do not meet US safety standards." APA Answer at 3, 5. These claims are false. First, all Canadian pilots that fly for a United States part 121 certificate holder need to hold a valid United States FAA Airline Transport Pilot Certificate which all of WMA's pilots already have, and they will all go through training required under part 121.

Second, as set forth above, WMA has asked the FAA to approve its proposed alternative method for compliance with 14 C.F.R. 121.436(a)(3) as set forth in its petition for exemption. WMA has not asked for a blanket exemption for all potential pilots it may hire. Rather, the requested exemption involves four specific individuals and is based on the experience and education of those individuals. Pursuant to part 11, the FAA will only grant the exemption if it finds that WMA's proposal will not adversely affect safety and is, in fact, in full compliance with the standards contained in the regulation. Therefore, by definition, WMA's proposed operations will comply with the requirements of Part 121.<sup>1</sup>

In addition, contrary to APA's assertion, WMA does not "seek to fundamentally change its business model." APA Answer at 2. As the Application makes clear, the new authority sought is in

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<sup>1</sup> If APA's arguments were accepted, then any time a carrier operated in accordance with a properly granted exemption, they would be guilty of "violating" safety standards, an obviously ridiculous outcome. It should also be noted that, contrary to the implication made by APA, WMA has addressed the DOT's concerns regarding WMA's key technical personnel in its October 13, 2021 response to the DOT's September 17, 2021 letter. See Docket DOT-OST-2021-0046-0013; Docket DOT-OST-2021-0078-0005.

addition to WMA's existing, and highly successful and profitable, part 135 operations. Those operations will continue even after the Applications are granted.

APA also erroneously claims that safety may be implicated by the fact that the Q400 aircraft can be configured "with up to 90 seats." APA Answer at 2. However, as WMA's Applications make clear, the Q400 used by WMA will be configured for 74 seats.

APA also seems to imply that WMA's safety will be impacted because WMA allegedly will enter into capacity purchase agreements with other carriers. However, capacity purchase agreements are not mentioned anywhere in the application, nor in the exhibit cited by APA. APA Answer at 2-3.

Taken as a whole, APA's answer is long on overblown rhetoric, and very short on legitimate safety concerns. WMA has a long history of safe part 135 operations, has met and will continue to meet, all FAA safety requirements, and has set forth in its Application substantial evidence showing how the new operations will be safely conducted. Accordingly, nothing in the APA's answer warrants denial of WMA's Application.

## **B. WMA'S APPLICATIONS ARE IN THE PUBLIC INTEREST**

APA also erroneously claims that the Applications are not in the public interest. It is clear, however, that passengers will receive a substantial benefit if the Applications are granted. For example, Billy Bishop Downtown Toronto Airport, the most convenient airport for travelers on flights to/from Toronto (based on consumer research), which is the fourth largest airline market in North America, is currently served on US transborder routes by a single Canadian airline, limiting the competitive options available to US travelers. Furthermore, US travelers on these flights are not able to earn or redeem US frequent flyer points, thus further reducing the consumer utility of these

flights. The granting of WMA's application would provide real competition at Billy Bishop airport, which is in the best interest of travelers. WMA also plans to offer US frequent flyer points on these routes, further increasing consumer utility.

WMA's business plan is based on the superior economics of the Q400 aircraft operating on routes of less than 400 nautical miles where its non-labor operating costs are significantly below competing aircraft.<sup>2</sup> These improved aircraft economics open up new routes that would not otherwise be financially sustainable, thus further increasing consumer choice and utility. In addition, operating the Q400 instead of other competing aircraft will translates into a more than 40% reduction in CO2 levels. This provides a major positive impact on the environment at a time when the US airline industry is struggling to make meaningful progress on greenhouse gas emissions, a significant public benefit.<sup>3</sup>

Independent expert analysis quantifies the benefit of WMA's commercial relationships with US carriers and the ability to feed their US hubs from Billy Bishop Airport, as being in the tens of millions of dollars. WMA's ability to feed passengers into the US domestic and international networks of US carriers will increase flying hours (and flying jobs) for these US carriers. It also provides travelers to and from Toronto with a much greater choice in travel options. Passengers will have the ability to connect over major US hubs with easy access to hundreds of US destinations. This will further stimulate travel demand.

Finally, APA seems to imply that WMA should have compared its proposed pay rates to those of "comparable regional airlines" such as Republic Airways. APA Answer at 3-4. It should

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<sup>2</sup> The Q400 is the only transport category aircraft currently given permission to operate into Billy Bishop Airport.

<sup>3</sup> APA recognizes that WMA's application only involves planned routes between Toronto and US destinations, but then makes the claim that WMA intends to violate cabotage rules. Yet the operations to be conducted in the U.S cannot be classified as cabotage as WMA is a "citizen of the United States." The fact that APA's Reply does not even mention citizenship is clear evidence that this unsupported allegation is completely untrue and without foundation.



be noted, however, that Republic was not included in WMA's analysis of benchmark rates because Republic no longer flies Q400 aircraft, having retired them as part of its 2017 bankruptcy reorganization plan. APA also erroneously claims that the pay rates at Republic are somehow relevant because "American currently codeshares with Republic on flights between New York and Toronto." APA Answer at 4. American does not codeshare with Republic, however, and only operates under a CPA agreement. In any event, comparisons with pay rates from American Airlines are not relevant to WMA's Application, as the only aircraft which can be flown into Billy Bishop Airport is the Q400, which American does not fly.

Accordingly, WMA's applications are clearly in the public interest and should be granted.

WHEREFORE, WMA respectfully requests that APA's Answer be stricken as untimely. Alternatively, WMA respectfully requests that leave be granted to file the included Reply to the Answer of APA.

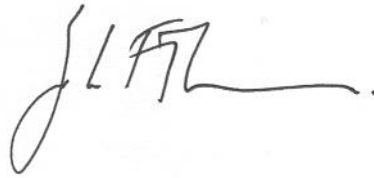


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Date: November 2, 2021

### **18 U.S.C. §1001 CERTIFICATION**

The contents of this Motion of Waltzing Matilda Aviation, LLC to Strike the Answer of Allied Pilots Association or in the Alternative For Leave to File a Reply to the Answer of Allied Pilots Association are true and correct to the best of my knowledge and belief. Pursuant to Title 18 United States Code Section 1001, I, John F. Thomas, WMA's Chief Executive Officer and President, in my individual capacity and as the duly authorized representative of WMA, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of this document. I understand that an individual who is found to have violated the provisions of 18 U. S. C. § 1001 shall be fined or imprisoned not more than five years, or both.

A handwritten signature in dark ink, appearing to read 'J F Thomas', with a long horizontal stroke extending to the right.

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John F. Thomas  
Chief Executive Officer and President and  
Duly Authorized Representative of  
Waltzing Matilda Aviation, LLC

## CERTIFICATE OF SERVICE

I certify that on November 2, 2021, in accordance with section 302.3 of the Department of Transportation's Rules of Practice, 14 C. F. R. §§ 302.3, I filed, in Docket DOT-OST-2021-0046 and Docket DOT-OST-2021-0078, by electronic means using the process set forth at <https://www.regulations.gov>, Waltzing Matilda Aviation, LLC's Motion To Strike The Answer Of Allied Pilots Association Or In The Alternative For Leave To File A Reply To The Answer Of Allied Pilots Association.

I also certify that on November 2, 2021, I served, by electronic mail, Lauralyn Remo, Chief, Department of Transportation Air Carrier Fitness Division, at [laura.remo@dot.gov](mailto:laura.remo@dot.gov), Damon Walker, staff member, Department of Transportation Air Carrier Fitness Division, at [damon.walker@dot.gov](mailto:damon.walker@dot.gov), and Jerish Varghese, staff member, Department of Transportation Air Carrier Fitness Division, at [jerish.varghese@dot.gov](mailto:jerish.varghese@dot.gov), a copy of Waltzing Matilda Aviation, LLC's Motion To Strike The Answer Of Allied Pilots Association Or In The Alternative For Leave To File A Reply To The Answer Of Allied Pilots Association.

I also certify that on November 2, 2021 I served by electronic mail, Daniel M. Rosenthal of JAMES & HOFFMAN, P.C., 1130 Connecticut Avenue, N.W. Suite 950, Washington, D.C. 20036-3975 [dmrosenthal@jamhoff.com](mailto:dmrosenthal@jamhoff.com), Counsel for the Allied Pilots Association, a copy of Waltzing Matilda Aviation, LLC's Motion To Strike The Answer Of Allied Pilots Association Or In The Alternative For Leave To File A Reply To The Answer Of Allied Pilots Association.

  
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